

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	No. 01-0539
Implementation of Section 13-712(g))	
of the Public Utilities Act.)	
)	
)	

REPLY COMMENTS OF SBC ILLINOIS

Illinois Bell Telephone Company ("SBC Illinois") submits these reply comments in response to the comments filed by TDS Metrocom, LLC ("TDS") and McLeodUSA Telecommunications Services, Inc. ("McLeod") regarding proposed Illinois Administrative Code Part 731 ("Proposed Rule"). The Proposed Rule was published for Public Comments in the Illinois Register on January 23, 2004.

I. The Commission Should Reject TDS's and McLeod's Proposed Revisions to Sections 731.205.

Section 731.205 of the Proposed Rule addresses the submission of wholesale service quality plans by Level 1 Carriers.¹ As set forth in the proposed rule, a Level 1 Carrier would be required to submit a plan on or before June 1, 2004 (and every three years thereafter), to the Manager of the Telecommunications Division of the Commission. In addition, the Level 1 carrier would be required to submit information regarding plan amendments. Under Section 731.205 (c) the Commission could, if it had reason to believe that the implementation of the plan discriminated against a

¹ As indicated in its earlier briefs throughout this proceeding, SBC Illinois objects to various portions of this Rule, including the requirements applicable to Level 1 Carriers. By submitting these reply comments, SBC Illinois does not waive those objections.

telecommunications carrier not a party to the agreement or that implementation of the plan was not consistent with the public interest, convenience and necessity, initiate a proceeding to investigate that wholesale service quality plan. Furthermore, Section 731.205 (d) provides that forty-five days prior to any proposed change, notice be served on the Manager of the Telecommunications Division of the Commission and all affected carriers. The rule further affords carriers contesting the proposed changes an opportunity to file a complaint with the Commission within thirty-five days after the notice of the change. In other words, the proposed rule as drafted provides ample opportunity for CLECs to become involved, if they believe that it is necessary to do so. Moreover, the plan established by the Commission for SBC Illinois already provides for periodic “six-month reviews” in which SBC Illinois and competing LECs can suggest changes to certain aspects of the plan.

McLeod and TDS would rewrite Section 731.205 of the rule to require what TDS and McLeod characterize as “a more formal process for the submission and approval of a Level 1 Carrier’s” plan. TDS Comments p. 2; McLeod Comments, p. 2. Specifically, TDS and McLeod recommend that a Level 1 Carrier be required to file a petition every three years for renewal of a plan or for approval of any proposed changes in its plan outside of the three year re-approval process. Additionally, they would require that the Commission open a contested case proceeding to review a proposed plan or any proposed revisions to a plan. TDS’s and McLeod’s suggestion should be rejected. First, what TDS and McLeod are essentially asking for is a permanent remedy plan docket. This is an unnecessary and duplicative process that potentially conflicts with what the Commission has already established in Docket No. 01-0662 (“the 271 proceedings”). The

Commission's final order in the 271 proceedings, provides for a comprehensive review of the Section 271 plan in three years along with "six month reviews" of the performance measures and standards. The schedule for any future reviews was to be determined in the normal course of those review proceedings.

Given that the Commission has already addressed these issues in the 271 plan proceeding, this rule should not mandate that the Commission open a formal proceeding and require SBC Illinois to file a petition. In addition, under the First Notice Order proposed rule, CLECs have the means to raise any complaints that they may have regarding changes to the wholesale service quality plan. Under Section 731.105(d), CLECs would be served with notice of any planned changes or submissions. The rule as drafted affords the Commission latitude to investigate, if necessary, and provides the CLECs with an opportunity to raise any concerns.

For all of these reasons, TDS's and McLeod's proposed revisions to Section 731.205 should be rejected.

II. The Commission Should Not Delete the Provisions of the Proposed Rules Relating to the Provision of Customer Service Records ("CSR") Return of Unbundled Loops ("ULR") and Loss Notification.

TDS proposes that the measures set forth in Sections 731.805 and 731.810, as well as the specific remedy payments set forth in Section 731.815, be deleted from the rules. Provisions such as these should be applied to CLECs. In fact, SBC Illinois has requested that the remedy payments for failing to meet these measures be increased.

TDS's proposal to delete these measures ignores the record of the CLECs' poor performance. SBC Illinois showed that, over a period of five months, CLECs failed to

provide CSRs on 10,374 of 12,003 orders for which CSRs were requested (an 86 percent failure rate); CLECs took more than three days to provide any response at all to SBC Illinois' orders on 6,896 of 12,033 orders, and more than 11 days to respond to 3,053 of those 12,033 orders; and CLECs failed to return unbundled loops on 4,054 of 8,673 orders (46 percent) for which loop return was requested. During those five months alone, thousands of end users' orders were blocked or delayed by the CLECs' unwillingness or inability to provide the basic wholesale services for which Level 4 carriers are responsible. (Spieckerman, Am. Ill. Ex. 3.0 at 6-13, Ex. 3.1, Ex. 3.2, Ex. 3.3). The Commission should reject the TDS's argument and in fact, should increase the amount of the remedy payments.

TDS argues that ULR and CSR are not "wholesale services" provided by a Level 4 carrier, but rather are provided when a Level 4 carrier ceases to use another carrier's services or facilities to provide retail service to an end user. TDS Comments, p. 7. According to TDS, therefore, measures should not be set for CSRs and unbundled loops.

TDS is not claiming that anything in the First Notice Order is inconsistent with federal law, or that the Level 4 standards are somehow pre-empted by TA96 or any rule or order of the FCC. At the same time, the proposed Level 4 obligations are clearly supported by state law. Section 13-712 of the Act applies to "every telecommunications carrier." 220 ILCS 5/13-712(a). Consistent with that language, this Commission has found that its Part 730 and Part 732 rules apply equally to ILECs and CLECs. Order, Ill. C.C. Dkt. 00-0596, 15 ¶ 71 (Oct. 23, 2002); 83 Ill. Admin. Code § 732.20. Moreover, Section 13-712(g), under which this proceeding is being conducted, requires the Commission to "establish and implement carrier to carrier wholesale service quality

rules” without distinguishing ILECs from CLECs. Thus, the General Assembly clearly intended that the Commission address the wholesale services provided by all LECs, not just incumbents. Other provisions of the Act also require that all LECs—not just CLECs? provide those services that are necessary for end users to change carriers. See e.g., 220 ILCS 5/13-514(2), 5/13-514(5)-(6). The CLECs have not argued that any of these provisions is in any way inconsistent with federal law. The provisions should be applied to Level 4 carriers.

TDS also argues that these requirements should not be imposed on Level 4 carriers, because CLECs have allegedly “not developed sophisticated electronic systems for processing and filling requests for ULR and CSR” and instead for the most part use manual systems. TDS Comments, pp. 8-9.

TDS’s position on this issue is precisely the problem, and the Commission’s order should make clear that the CLECs must make wholesale service a priority. The evidence shows that CLECs will not provide CSRs or return unbundled loops, until they are forced to do so. Indeed, as SBC Illinois pointed out in its Brief on Exceptions, this is the reason that the Commission should increase the credits that would apply to CLECs that fail to provide adequate wholesale services. See SBC Exc. at 25-28; see also Verizon Exc. at 27-29.

Finally, TDS suggests that even if there are delays in releasing the retail customer’s loop if the end user is switching to another CLEC or an ILEC (which TDS concedes there should not be), “delays in releasing the loop should not impact the retail customer’s transition to the new carrier.” TDS Comments, p. 9. In support of this

statement, TDS argues that the new carrier – CLEC or ILEC – can typically get a new loop to serve the end user, “rather than migrating the same loop.” Id.

TDS’s cavalier statements ignore the problems created by such a delay. First, the goal of migrating any end-user customer’s service from one local service provider to another local service provider should always be to provide seamless service. The re-use of a loop by the same end-user customer allows the end-user customer's telephone number to be moved to another local service provider with minimal to no loss of service.

Under TDS’s approach, a number of situations could occur that would adversely affect this transition assuming other facilities are available:

- 1) The new local service provider must first put in a request for new loop facilities.
- 2) An installer must go out to the premise to connect the new loop facilities to the customer's location.
- 3) The end-user customer may need to be at the premises during the migration which could be perceived as inconvenient by the customer.
- 4) The numbers would need to be removed from the old facilities and moved to the new facilities. The customer would experience downtime; and
- 5) The customer might require inside wiring changes and thus incur an additional cost.

If no other facilities are available in the area then additional delays would occur under TDS’s approach. New facilities might need to be built. Those construction costs may be passed to the new local service provider or to the end-user customer. Again the customer

might incur charges from their telephone equipment provider for inside wiring connections.

TDS's attempt to minimize the problems caused by a non-end user delay highlights the need for these performance measures. TDS's approach would cause an abundance of unused loops, increased network costs, and delay in migrations. It could also have a lasting effect on the customer's impression of changing providers.

For all of these reasons, the Commission should also reject TDS's proposal to delete Sections 731.805, 731.810 and 731.815.

Respectfully submitted,

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